



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

JAMES EDWARD ELLERBE,

Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.

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CIVIL ACTION NO. 6:05-1803-HFF-WMC

ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS

This action was filed by Plaintiff under 28 U.S.C. § 1331 with no further specification as to the nature of the action. Petitioner is proceeding *pro se*. The matter is before the Court for review of the report and recommendation (Report) of the United States Magistrate Judge in which he recommends that the Court grant Plaintiff's Motion to Dismiss without prejudice. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed his Report on July 25, 2005, and Defendants have not objected to the Report. In the absence of such objections, the Court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir.1985).

After a review of the Report and the record in this case pursuant to the standards set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Plaintiff's motion to dismiss, without prejudice, is **GRANTED**.

IT IS SO ORDERED.

Signed this 23d day of August, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE